

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JAMES D. JOHNSON, as next friend to
Olivia Y., et al.

PLAINTIFFS

vs.

CIVIL ACTION NO. 3:04cv251LN

HALEY BARBOUR, as Governor of the
State of Mississippi, et al.

DEFENDANTS

**DEFENDANTS' MOTION TO DISMISS NAMED PLAINTIFFS
OLIVIA Y. AND CODY B.**

COME NOW, Haley Barbour, as Governor of the State of Mississippi, Donald Taylor, as Executive Director of the Mississippi Department of Human Services, and Rickie Felder, as Director of the Division of Family and Children's Services ("Defendants") and move this court to enter an Order dismissing Olivia Y. and Cody B. as plaintiffs in this class action and as representatives of the class.

Defendants respectfully request that this court waive the requirement for a separate memorandum of authorities, as required under Local Rule 7.2(D), and accept the following in support of this Motion.

On March 11, 2005, this court certified this lawsuit as a class action and defined the class as follows: "all children who are or will be in the legal and/or physical custody of DFCS." In that order, both Olivia Y. and Cody B. were identified as class representatives. However, Olivia Y. and Cody B. are no longer in the legal and/or physical custody of DFCS. On May 19, 2005, the physical custody of Olivia Y. was given to RW and TW. *See* Review Order and Order Granting Durable Legal Custody, attached as Exhibit "A." On June 15, 2006, the Forrest County

Youth Court granted RW and TW durable legal custody of Olivia Y and ordered her case with DFCS closed after a review period of six months. *See id.* Olivia Y.'s next friend in this class action, James Johnson, was present and served as her guardian ad litem in the Youth Court hearing. *See id.* On December 15, 2006, Cody B. was adopted by RB and CB, and a Judgment of Adoption was filed on that day by the Chancery Court of Jackson County. *See* Judgment of Adoption, attached as Exhibit "B."

Due to these events, Olivia Y. and Cody B. should be dismissed from this lawsuit as their individual claims are now moot. Olivia Y. and Cody B. should also be dismissed as representatives of the class as they are no longer members of such class and are no longer proper representatives under Rule 23 of the Federal Rules of Civil Procedure. *East Texas Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) ("a class representative must be part of the class and 'possess the same interest and suffer the same injury' as the class members").

WHEREFORE, Defendants respectfully request that the court grant Defendants' Motion to Dismiss Named Plaintiffs Olivia Y. and Cody B.

This the 12th day of January, 2007.

Respectfully submitted,

HALEY BARBOUR, as Governor of the State of Mississippi; DONALD TAYLOR, as Executive Director of the Department of Human Services; and RICKIE FELDER as Director of the Division of Family and Children's Services

BY: /s/ Dewitt L. ("Rusty") Fortenberry, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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I also certify that I have this day served a copy of the foregoing on the following non-ECF participants by United States Mail, postage prepaid:

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SO CERTIFIED, this the 12th day of January, 2007.

/s/ Dewitt L. ("Rusty") Fortenberry, Jr.